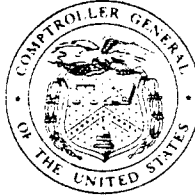


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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-202393

DATE: July 9, 1981

MATTER OF: Virginia Manufacturing Company

**DIGEST:**

1. Affirmative determinations of responsibility of contracting officers are not for review except in cases of fraud or misapplication of definitive responsibility criteria set forth in invitation, neither of which exists here.
2. No legal basis exists to preclude contract award merely because low bidder may have submitted below-cost bid.
3. Where bidder submits definite item prices as required and offers definite discount of offered prices should certain contingency occur, bidder's prices are firm.
4. Where discount of bidder is dependent upon award to bidder of "groups" of 3,000 or more units and only one such group existed in invitation section, word "groups" obviously was meant to refer to that one group.
5. Where bidder offers discount on all prices bid if award is made to it on certain item, even though price as originally submitted on that item is not low, contracting agency may apply discount for purpose of determining low bid prices.

The Virginia Manufacturing Company (Virginia) protests the award to the Baker Manufacturing Co. (Baker) of award groups I, II, III, IV, and VII, section "A," under Federal Supply Service (General Services Administration) invitation for bids No. FNMS-S1-5240-A-02-24-81.

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We do not consider the protest to have merit.

The issue in this case is whether an offered discount may be applied in determining the low bid price.

The following pertinent extended bid prices and award group aggregate prices were received on these award groups:

Award Group	Item No.	Bidders' Prices		
		Virginia	Baker	Gem Industries Inc. (Gem)
I	1	\$104,016	\$ 96,360	N/B
	2	28,512	30,096	N/B
		(132,528)	(126,456)	
II	3	155,588	160,400	\$143,959
	4	43,308	48,120	46,115
		(198,896)	(208,520)	(190,074)
III	5	152,928	147,618	N/B
	6	114,460	122,220	N/B
		(267,388)	(269,838)	
IV	7	69,866	71,410	N/B
	8	20,844	22,388	N/B
		(90,710)	(93,798)	
VII	13	607,287	600,425	N/B
	14	125,750	134,552.50	N/B
		(733,037)	(734,977.50)	

Prompt-payment discounts of 4 percent (Virginia), 3 percent (Baker), and 0.25 percent (Gem) were submitted with these prices. Further, each of the Baker prices was asterisked as being governed by the following notation placed at the end of section "A"--"IF AWARDED GROUPS WHICH INCLUDE 3000 OR MORE WARDROBES, REDUCE ALL PRICES 10%." The only group containing this number of items was award group VII.

Without consideration of the 10-percent price reduction offered by Baker, the low bidders were Virginia on award groups III, IV, and VII; Baker on award group I; and Gem on award group II. Total prices (including prompt-payment discounts), had awards been made on these prices, were \$1,047,489.60 for Virginia, \$122,662.32 for Baker, and \$189,598.81 for Gem. Adding to the total of these prices (\$1,359,750.73) the sum of \$104,030.78 for the freight costs on award group VII, the value of the award on all five award groups would have been \$1,463,781.51. However, it was determined that were 10 percent (\$143,358.95) deducted from the total Baker price (\$1,433,589.50) for the five award groups, were the prompt-payment discount (\$38,706.92) deducted, and were freight costs on award group VII (\$110,327.61) added, an award to Baker for all five award groups would be priced at (evaluated price) \$1,361,851.24. Since an award on the latter basis would result in a savings to the Government of \$101,930.27, award was made to Baker on all section "A" award groups.

The position of Virginia is that, first, the 10-percent reduction of Baker cannot be utilized since an award to Baker on the only award group with 3,000 or more units (award group VII) was not possible--the Virginia bid was low on that award group. According to Virginia, by the language in the Baker bid notation, the 10-percent reduction was to be implemented only if Baker was awarded that award group. It is also contended that this reduction makes the Baker bid less than a firm offer. It is further argued that the Baker words, "If awarded groups," signify that more than one award group of 3,000 or more units must be awarded to Baker before the 10-percent reduction could be utilized. Since only one such group exists, Virginia states that the 10-percent reduction may not be used inasmuch as the condition ("if") was never fulfilled. It is logical, it is contended, that Baker might be able to make a profit if an award included two such groups, but not if it contained only one group of 3,000 or more units. It is maintained that Baker could not give such a large reduction in price if only awarded one of these large groups and still be able to meet the specifications. In summation, to utilize the 10-percent reduction, the contracting agency must substantially change the wording of the

Baker notation, something that is impermissible. Finally, it is noted that the agency report states that by awarding all the section "A" award groups to Baker, a savings to the Government of \$10,930.27 is achieved. The savings, it is contended, would be rather 10 percent of the original Baker bid price, or \$130,000.

We first note that the agency's statement that the aggregate award to Baker would result in a Government savings of \$10,930.27 is apparently a typographical error. As noted above, the savings would equal \$101,930.27--the difference between the costs of awards to Virginia, Baker, and Gem and the cost of an aggregate award to Baker.

As regards the contention that Baker could not reduce its bid prices by this amount or even by the greater sum of 10 percent (\$143,358.95) of its prices and still be able to make a profit or furnish items which would be in compliance with the specifications, we note that the contracting agency found Baker to be a responsible bidder and, accordingly, made the award to that firm. Whether a bidder can perform at its bid price is a question that goes to the responsibility of the bidder. Agnew Tech-Tran Inc., B-184272, July 14, 1975, 75-2 CPD 32. We do not review responsibility determinations of contracting officers unless either fraud or bad faith is shown on the part of the procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Systems & Programming Resources Inc., B-192190, August 16, 1978, 78-2 CPD 124; American Drafting and Laminating Co., Inc., B-194015, March 7, 1979, 79-1 CPD 165. Neither exception applies in this case.

Further, we have consistently held that the submission of a below-cost bid, or "buying in," is not a valid basis upon which to challenge an award. Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169; American Drafting and Laminating Co., Inc., supra.

Nor do we believe reasonable the Virginia protest bases that the Baker 10-percent reduction notation makes the prices submitted not firm prices and that it is inoperable due to the use of the word "groups" when only one group with 3,000 or more units exists. First, Baker offered in its bid definite unit prices for each item. Baker provided that these prices might be changed in a definite manner if a certain contingency occurred. If this contingency occurred, the change in the prices was definite and was definitely ascertainable. If the contingency did not occur, the prices remained as submitted. For these reasons, we can only view the Baker prices as being firm prices. As concerns the use of the word "groups," we do not view it as reasonable that Baker intended the notation to be invalid if it was not awarded two groups of the stated type where it was readily visible that only one such group was included in section "A" of the invitation.

Finally, it is contended that the 10-percent reduction may not be utilized because Baker was not originally the low bidder on award group VII. The Baker notation did not state that an award had to be permissible on the originally submitted price on award group VII before the 10-percent reduction could be applied to that item. Whether the 10-percent reduction in price is first applied to the award group VII price to determine if it would be low or whether the 10-percent reduction is applied to all item prices without making the first determination, the Baker bid is low on each of groups I, II, III, IV and VII after the application of the discount. See, in this connection, Moir Ranch and Construction Company; Mulino Construction Company, Inc., B-191616, June 8, 1978, 78-1 CPD 423. In that case, a bidder, who was low on only three of the eight items upon which it bid, stated in its bid that, if all of the eight items on which it bid were accepted by the Government, it would offer an additional 10-percent discount on its prices. The aggregate bid of the bidder on the eight items was not low and an award on the eight items was not possible without the application of the 10-percent price reduction. We concluded that that bidder's 10-percent discount could be properly utilized and that an award on the eight items could be made to that bidder.

Accordingly, the protest is denied.

*Milton J. Aroslan*  
Acting Comptroller General  
of the United States